

**New York City E. Riv. Waterfront Dev. Fund, LLC v
10 S. St. Assoc. LLC**

2017 NY Slip Op 32524(U)

November 28, 2017

Supreme Court, New York County

Docket Number: 850192/2016

Judge: Robert D. Kalish

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: Hon. ROBERT D. KALISH
Justice

PART 29

NEW YORK CITY EAST RIVER WATERFRONT DEVELOPMENT
FUND, LLC,

Plaintiff,

INDEX NO. 850192/2016

MOTION DATE 07/26/17

MOTION SEQ. NO. 001

- v -

10 SOUTH STREET ASSOCIATES.LLC, 10 SSA LANDLORD LLC
a/k/a 10 SSA LANDLORD, LLC, DERMOT SOUTH STREET, LLC,
THOMAS MANUFACTURING INC., ADS WINDOWS INC., JAMC
CORP., ARCH MILL SPECIALTIES INC., LIF INDUSTRIES INC. d/b/a
LONG ISLAND FIREPROOF DOOR, DNA BUILDINGS SYSTEMS
INC., PARRETT MANUFACTURING INC, CAPITOL FIRE
SPRINKLER CO. INC., ROCKLEDGE SCAFFOLD CORP., MARK &
SON METAL PRODUCTS INC., GMC CONTRACTING &
ESTIMATING SERVICE., INC.,

"JOHN DOE #1" through "JOHN DOE #25", the last twenty five
names being fictitious and unknown to plaintiff, the persons or
parties intended being the tenants, occupants, persons or
corporations, if any, having or claiming an interest in or lien
upon the premises, described in the complaint;

Defendants.

The following papers, numbered 34-45, were read on this motion for an order of reference

Notice of Motion—Affirmation in Support—Affidavit in Support—Exhibits A-I

No(s). 34-45

Motion by Plaintiff New York City East River Waterfront Development Fund, LLC for an order (a) appointing a Referee to (i) ascertain and compute the amount due to Plaintiff, and (ii) ascertain and determine whether the mortgaged premises may be sold in one or more parcels, and (b) to discontinuing this action against defendants sued herein as "John Doe #1" to "John Doe #12" and to amend the caption accordingly, is granted as follows:

This is an action to foreclose a consolidated leasehold mortgage on real property situated in New York City known as Block 2, Lot 2 and by street number 10 South Street pursuant to a promissory note dated March 2, 2011 and Leasehold

Mortgage, Security Agreement and Fixture Filing (Mortgage1) securing the payment for the indebtedness to the extent of \$10,000,000 dated July 1, 2012 together with and an additional Leasehold Mortgage, Security Agreement and Fixture Filing securing the payment for the indebtedness to the extent of \$67,000,000 dated July 1, 2012 which mortgages were consolidated by agreement dated July 1, 2012.

Plaintiff commenced the instant action to foreclose on the mortgage by way of summons and complaint e-filed on September 20, 2016. According to the complaint and the instant motion papers, the Defendants have failed to comply with the terms of the various operative loan agreements, and Plaintiff now seeks an order appointing a referee to (i) ascertain and compute the amount due to Plaintiff, and (ii) ascertain and determine whether the mortgaged premises may be sold in one or more parcels. In addition, Plaintiff seeks to discontinue against and strike from the caption Defendants “John Doe #1” to “John Doe #12.” Plaintiff states that said John Doe Defendants were never served with process and “are neither necessary nor proper party defendants.” (Bergman Affirm. ¶ 7.)

According to the papers—with the exception of the aforesaid John Doe Defendants—all of the Defendants have been served with process. Plaintiff states that Defendants 10 South Street Associates, LLC, 10 SSA Landlord LLC a/k/a 10 SSA Landlord, LLC, and Dermot South Street, LLC have appeared and “submitted a document denominated ‘Answer’ which recited that ‘Admit the allegations of the Complaint and affirmatively state they have no defenses to the Complaint’.” (Bergman Affirm. ¶ 6.)

In addition, the parties submit a stipulation further noting that “defendants do not contest any allegations of the complaint and specifically consent to issuance of an order of reference.” (Bergman Affirm. ¶ 6, Ex. I [Stipulation].)

As such, having reviewed the submitted papers and there being no opposition to the instant motion, the Court grants the instant motion.

CONCLUSION

Accordingly,

Upon review of the summons, complaint, notice of pendency and the instant motion papers in the instant action, from all of which it appears that this action was brought to foreclose a consolidated leasehold mortgage on real property situated in New York County, known as Block 2, Lot 2 and by street number 10 South Street, New York, New York, pursuant to various operative agreements attached as exhibits to the instant motion; and that all Defendants—except the aforesaid Defendants “John Doe #1” to “John Doe #12” were served with process—and that Defendants have not contested the allegations contained in the complaint; and that Defendants 10 South Street Associates, LLC, 10 SSA Landlord LLC a/k/a 10 SSA Landlord, LLC, and Dermot South Street, LLC have stipulated that “defendants do not contest any allegations of the complaint and specifically consent to issuance of an order of reference” (Bergman Affirm. ¶ 6, Ex. I [Stipulation]),

NOW, on application of Plaintiff New York City East River Waterfront Development Fund, LLC, it is

ORDERED that the instant action is referred to Michael J. Roberts, Esq., having an office at 401 Broadway, New York, New York 10013, telephone number (212) 226-4925, as Referee, to compute the amount due to Plaintiff and to ascertain and determine whether the mortgaged premises may be sold in one or more parcels; and it is further

ORDERED that the Referee shall make his Report to the Court no later than sixty days of the date of this order and that, except for good cause shown, Plaintiff shall move for judgment no later than sixty days of the date of the Report; and it is further

ORDERED that upon submission of the Report, Plaintiff shall pay \$500 to the Referee as compensation for his services, which sum may be recouped as a cost of litigation; and it is further

ORDERED that the Referee’s hearing be had in the County of New York; and it is further

ORDERED that the Referee appointed herein is subject to the requirements of Rule 36.2 (c) of the Chief Judge, and if the Referee is disqualified from receiving an appointment pursuant to the provision of that Rule, the Referee shall notify the Appointing Judge forthwith; and it is further

ORDERED that, by accepting this appointment, the Referee certifies that he is compliant with Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36), including, but not limited to, Section 36.2 (e) ("Disqualifications from appointment") and Section 36.2 (d) ("Limitations on appointments based upon compensation"); and it is further

ORDERED that Defendants "John Doe #1" to "John Doe #12" are hereby dismissed without prejudice from this action; and it is further

ORDERED that the action shall bear the following caption:

NEW YORK CITY EAST RIVER WATERFRONT
DEVELOPMENT FUND, LLC,

INDEX NO. 850192/2016

Plaintiffs,

- v -

10 SOUTH STREET ASSOCIATES.LLC, 10 SSA LANDLORD
LLC a/k/a 10 SSA LANDLORD, LLC, DERMOT SOUTH
STREET, LLC, THOMAS MANUFACTURING INC., ADS
WINDOWS INC., JAMC CORP., ARCH MILL SPECIALTIES
INC., LIF INDUSTRIES INC. d/b/a LONG ISLAND FIREPROOF
DOOR, DNA BUILDINGS SYSTEMS INC., PARRETT
MANUFACTURING INC, CAPITOL FIRE SPRINKLER CO.
INC., ROCKLEDGE SCAFFOLD CORP., MARK & SON METAL
PRODUCTS INC., GMC CONTRACTING & ESTIMATING
SERVICE., INC.,

Defendants.

And it is further

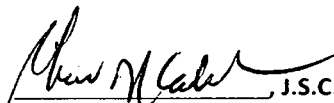
ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the County Clerk (Room 141B) and the Clerk of the Trial

Support Office (Room 158M), who are directed to mark the court's records to reflect the change in parties; and it is further

ORDERED that Plaintiff serve a copy of this order with notice of entry upon the Clerk of the Court and upon Defendants within 20 days of entry of this order.

The foregoing constitutes the decision and order of the Court.

Dated: November 28, 2017
New York, New York


J.S.C.
HON. ROBERT D. KALISH
J.S.C.

1. Check one:.....

2. Check if appropriate:..... MOTION IS:

3. Check if appropriate:.....

☐ CASE DISPOSED ☒ NON-FINAL DISPOSITION
☒ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
☐ SETTLE ORDER ☐ SUBMIT ORDER
☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE